HIGH COURT OF CHHATTISGARH AT BILASPUR

Division Bench

Coram : **Hon'ble Shri Jagdish Bhalla, Ag.C.J. and**
Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Writ Appeal No.245 of 2007

APPELLANTS RESPONDENTS

1. State of Chhattisgarh, Through Secretary, Department of Excise, Mantralaya, Shastri Chowk, Raipur, Chhattisgarh
2. Excise Commissioner, Shiv Bhawan, Bajran Bazar, Raipur, Chhattisgarh
3. Collector, Excise, Raipur, Chhattisgarh
4. Assistant Commissioner, Excise, Collectorate Building, Raipur, Chhattisgarh
5. District Excise Officer, Collectorate Building, Raipur, Chhattisgarh

versus

RESPONDENT PETITIONER

Shekhar Sahu, S/o Shri Subhash Sahu, aged about 25 years, Excise Businessman, R/o 1-8/1305, Shiv Bhawan, New Shanti Nagar, Raipur, Chhattisgarh

Appeal to Division Bench under Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 read with Rule 157(1)(a) of the Chhattisgarh High Court Rules, 2005

Present : Shri Yashwant Singh Thakur, Government Advocate for the State/appellants.
Shri Prashant Jayaswal, Senior Advocate with Shri Vinay Pandey, counsel for the caveator/respondent.

ORAL ORDER

(Passed on 28th November, 2007)

The following oral order of the Court was passed by **Hon'ble Shri Jagdish Bhalla, Acting Chief Justice:**

This appeal arises out of the order dated 23-07-2007 passed by the learned Single Judge in Writ Petition No.2321/2002.

This intra-Court appeal has been filed under Section 2 of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006, which is as follows:

> "2. **Appeal to the Division Bench of the High Court from a judgment or order of one Judge of the High Court made in exercise of original jurisdiction.** – (1) An appeal shall lie from a judgment or order passed by one Judge of the High Court in exercise of original jurisdiction under Article 226 of the Constitution of India, to a Division Bench comprising of two Judges of the same High Court:
>
> Provided that no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.
>
> (2) An appeal under sub-section (1) shall be filed within 45 days from the date of order passed by a single Judge:
>
> Provided that any appeal may be admitted after the prescribed period of 45 days, if the petitioner satisfies the Division Bench that he had sufficient cause for not preferring the appeal within such period.
>
> ***Explanation***. – The fact that the petitioner was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may by sufficient cause within the meaning of this sub-section.
>
> (3) An appeal under sub-section (1) shall be filed, heard and decided in accordance with the procedure as may be prescribed by the High Court."

From perusal of the above provision, it is crystal clear that an appeal shall lie from a judgment or order passed by one Judge of the High Court in exercise of original jurisdiction under Article 226 of the

Constitution of India to a Division Bench comprising of two Judges of the same High Court. The provision further provides that no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

Learned Government Advocate for the State/appellants submits that the petitioner had filed the writ petition under Article 226/227 of the Constitution of India. However, he concedes that the writ petition was filed invoking exercise of supervisory jurisdiction under Article 227 of the Constitution of India. He further submits that along with the prayer for exercise of supervisory jurisdiction under Article 227 of the Constitution of India, since the petitioner had prayed for issuance of a writ in the nature of mandamus under Article 226 of the Constitution of India, therefore, the appeal lies. The said question has already been decided by this Court in Writ Appeal (P.R.) No.3486 of 2007 (***Chhattisgarh Chemical Mill Mazdoor Sangh, Labour Camp Jamul*** **vs.** ***Director Keystone Industries Ltd. and others***) disposed of on 13-07-2007, in which the Division Bench observed as under:

> "We are of the considered opinion that the powers conferred by Article 226 are different in spirit from the powers conferred by Article 227 of the Constitution and they operate in different fields. It may be that the same goal can be achieved by the appellant by filing a writ petition under two different provisions of the Constitution. Under Article 226, an order, direction or prerogative writ has to be issued to the State, Authority or a person and in such proceedings the State, Authority or person against whom the relief is being sought is a necessary party. The proceedings under Article 226 of the Constitution of India are the original proceedings however, the nuclear point is that whether it originated first time in the High Court under

> Article 226 only. However, under Article 227, the petitioner would come before this Court after being aggrieved by an order or judgment of the subordinate Court or Tribunal for the purpose of ascertaining whether in giving such judgment or order the subordinate Court or the Tribunal concerned has acted within the Authority of Law."

The Division Bench further observed as under:

> "It has already been referred to hereinabove that the controversy does not originate before the High Court. Thus, from the appreciation of the above discussion, it can be said that no writ appeal is maintainable in cases where the controversy does not originate before the High Court. The Rule is based on the logic that Labour Court is acting as Tribunal having already analytically examined the matter and tested it in the background of the law laid down. In such circumstances, in order to get finality the decision of learned Single Judge be taken as final and as such the writ appeal is not maintainable."

We called upon learned Government Advocate for the State/appellants to substantiate the case to the extent that the petitioner had filed the writ petition before the learned Single Judge for exercise of original jurisdiction under Article 226 of the Constitution of India. Since, learned Government Advocate for the State/appellants has also conceded that the writ petition was filed for exercise of supervisory jurisdiction under Article 227 of the Constitution of India, he could not substantiate that the writ petition was filed for exercise of original jurisdiction under Article 226 of the Constitution of India. However, learned Government Advocate for the State/appellants relies upon ***M/s Lokmat Newspapers Pvt. Ltd.*** **vs.** ***Shankarprasad,*** **AIR 1999 SC 2423.**

In the light of above discussion, the writ appeal is not maintainable.

Accordingly, it is dismissed.

Sd/-
Acting Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

Gopal